

# LICENSING COMMITTEE

Thursday, 15th June, 2017  
6.30 pm





# LICENSING COMMITTEE

## BURNLEY TOWN HALL

Thursday, 15th June, 2017 at 6.30 pm

This agenda gives notice of items to be considered in private as required by Regulations (4) and (5) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Members are reminded that if they have detailed questions on individual reports, they are advised to contact the report authors in advance of the meeting.

Members of the public may ask a question, make a statement, or present a petition relating to any agenda item or any matter falling within the remit of the committee.

Notice in writing of the subject matter must be given to the Head of Governance, Law & Regulation by 5.00pm on the day before the meeting. Forms can be obtained for this purpose from the reception desk at Burnley Town Hall or the Contact Centre, Parker Lane, Burnley. Forms are also available on the Council's website [www.burnley.gov.uk/meetings](http://www.burnley.gov.uk/meetings).

### **AGENDA**

#### **1) Apologies**

To receive any apologies for absence.

#### **2) Minutes**

5 - 8

To approve as a correct record the Minutes of the last meeting held on 27<sup>th</sup> October 2017.

#### **3) Additional Items of Business**

To determine whether there are any additional items of business which, by reason of special circumstances, the Chair decides should be considered at the meeting as a matter of urgency

#### **4) Declaration of Interest**

#### **5) Exclusion of the Public**

To determine during which items, if any, the public are to be excluded from the meeting.

#### **6) Public Question Time**

To consider questions, statements or petitions from members of the public.

**7) Amendments to Taxi Licensing - Policy Guidelines to Fitness and Propriety Including Convictions and Other Relevant Information.** 9 - 54

To consider the adoption of new policy guidelines (Appendix 'A') to be considered when determining whether new applicants or current drivers are 'fit and proper' persons.

Appendix B shows the where the amendments to the policy have been made through track changes.

**8) Appointments to Licensing Sub Committees** 55 - 56

To obtain approval of the Licensing Committee for sub delegation of functions to a Licensing Act 2003 Sub Committee and to Taxi Licensing Sub Committees and for the appointment of Licensing Committee members to these sub committees on a rotational basis and subject to their availability.

**MEMBERSHIP OF COMMITTEE**

Councillor Ann Royle (Chair)  
Councillor Gary Frayling (Vice-Chair)  
Councillor Gordon Birtwistle  
Councillor Bill Brindle  
Councillor Frank Cant  
Councillor Ida Carmichael  
Councillor Saeed Chaudhary  
Councillor Jean Cunningham

Councillor Danny Fleming  
Councillor Shah Hussain  
Councillor Mohammed Ishtiaq  
Councillor Anne Kelly  
Councillor Sobia Malik  
Councillor Elizabeth Monk  
Councillor Christine White

**PUBLISHED**

Wednesday, 7 June 2017

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## LICENSING COMMITTEE

BURNLEY TOWN HALL

27/10/2016

### PRESENT

### MEMBERS

Councillor Ann Royle, in the Chair.

Councillors Howard Baker, Margaret Brindle, Frank Cant, Ida Carmichael, Saeed Chaudhary, Gary Frayling, Anne Kelly, Mohammed Ishtiaq, Sobia Malik, Liz Monk, Paul Reynolds, and Christine White

### OFFICERS

Karen Davies	- Head of Environmental Health & Licensing
	- Officer
Emma Barker	- Principal Legal Officer
Imelda Grady	Democracy Officer

#### 10. Apologies

Apologies for absence were received from Councillors Bill Brindle and Tom Porter.

#### 11. Minutes of the last meeting

The Minutes of the last meeting held on 18<sup>th</sup> August 2016 were confirmed as a correct record and signed by the Chair.

#### 12. Additional Items of Business

In accordance with the provisions in Section 100(B) (4)(b) of the Local Government Act 1972 the Chair agreed that the following item should be considered as item 9 on the agenda so that the Licensing Committee could make recommendations to the next Full Council meeting.

Item: Amendment to Hackney Carriage Byelaws

#### 13.. Taxi Licence Fees 2017

Members considered the level of taxi licence fees to be effective from January 2017.

The Environmental Health and Licensing Manager explained that

legislation permitted the Council to recover the cost of providing the taxi licence service through fees charged for driver, vehicle and operators licences but that the fees could not generate a profit for the Council.

The review of fees this year showed that they were still in line with expenditure and therefore no variation to fees for 2017 were proposed.

She also explained that the taxi reserve generated by the private hire drivers fees would continue to be used to provide a discount per private hire driver until December 2018 when the reserve will have been fully refunded.

**RESOLVED** That the taxi licence fees for 2017 be maintained at the current level for the following licences:  
Taxi Hire Driver; Hackney Carriage Driver; Private Hire Vehicle; Hackney Carriage Vehicle; and Private Hire Operator.

**14. Amendment to Common Policy – Taxi and Private Hire Driver Convictions and Other Information**

Members considered an amendment to the policy guidelines for when officers were determining whether new applicants or current holders of hackney and private hire drivers licences were fit and proper persons.

The Environmental Health and Licensing Manager explained that the Council's scheme of delegation required that in all cases the Council's guidelines for determining applications must be adhered to. The current policy guidelines dealt only with convictions, however there was a duty for the Council to take into account any complaints, breaches of licensing conditions or any intelligence made by the Police, Licensed Operators or any other agency.

The proposed changes were attached at appendix A to the report and would ensure that all relevant matters were considered when Officers were determining the fitness and propriety of an applicant/licence holder. The proposed name of the amended policy was 'Guidelines on the relevance of previous convictions and other information'.

**RESOLVED** That approval be given to the new policy guidelines ' Guidelines on the Relevance of Previous Convictions and Other Information' with immediate effect.

**15. Amendment to Hackney Carriage Byelaws**

Members consider proposed amendments to the Hackney Carriage Byelaws to ensure that they accurately reflected the requirements of the Council with regard to driver training, behaviour and customer care.

The Principal Legal Officer explained that Burnley's byelaws had not been

updated since 1978 and no longer reflected modern day requirements for the control of hackney carriage drivers. The changes were necessary to ensure that hackney carriage drivers conditions reflected those of private hire driver conditions

**RESOLVED That Full Council be recommended to approve the proposed changes to the Burnley Hackney Carriage Byelaws as detailed in Appendix A to the report**

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## REPORT TO LICENSING COMMITTEE



<b>DATE</b>	<b>15<sup>th</sup> June 2017</b>
<b>PORTFOLIO</b>	<b>Environment</b>
<b>REPORT AUTHOR</b>	<b>Peter Henderson</b>
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### Amendments to Taxi Licensing – Policy Guidelines to Fitness and Propriety Including Convictions and Other Relevant Information.

#### PURPOSE

1. To consider the adoption of new policy guidelines that need to be considered when determining whether new applicants or current drivers are ‘fit and proper’ persons.

#### RECOMMENDATION

2. That Licensing Committee approves the new policy guidelines as set out in this report

#### REASONS FOR RECOMMENDATION

- 3 To ensure that the Council Policy is aligned to the Local Government Association’s (LGA) ‘Example Taxi and PHV Licensing Criminal Convictions’ Policy’ which was published on 22<sup>nd</sup> March 2017, which supports strong safeguarding principles.

#### SUMMARY OF KEY POINTS

- 4 The LGA has recently published an Example Taxi and PHV Licensing Criminal Convictions Policy which is effectively a best practice guide that councils may take into account when reviewing their convictions policies.
- 5 Burnley Council’s current policy was revised in 2016 and is based on a policy adopted regionally via the Association of Greater Manchester Authorities (AGMA). The AGMA policy is closely aligned to the new LGA guidance. In certain cases the Burnley policy is more robust reflecting Members previous decisions. Recognising public safety as a principal licensing objective, and supporting the need to adopt consistent taxi licensing policy across a broader footprint, the current policy has been reviewed and strengthened to reflect LGA guidance where appropriate. The revised policy is attached at Appendix ‘A’ and to assist members there is also a ‘track changes’ version attached at Appendix ‘B’.
- 6 The overriding aim of the Council is to protect the safety of the public. The Council is

committed to ensure:

- That a person is a fit and proper person.
- That the person does not pose a threat to the public.
- That the public are safeguarded from dishonest persons.
- The safeguarding of children, young persons and vulnerable adults.

- 7 The proposed policy provides guidance to any person with an interest in public and private hire licensing including:
- Applicants for new licenses
  - Existing licensed holders whose licences are being reviewed or renewed
  - Licensing officers
  - Members of the licensing committee (or other relevant decision making body)
  - Magistrates hearing appeals against local authority decisions.

The convictions policy particularly helps Members and officers to be consistent when considering whether or not an applicant or an existing licence holder is a fit and proper person to hold a licence.

- 8 Burnley is the first Council locally to consider adopting the updated LGA guidelines. It would be proportionate to apply the new guidelines for new applicants immediately and for existing drivers on renewal (though reserving the right to apply the updated policy to existing drivers before renewal in appropriate circumstances).

#### **FINANCIAL IMPLICATIONS AND BUDGET PROVISION**

- 9 None

#### **POLICY IMPLICATIONS**

- 10 Determination of hackney carriage and private hire driver's and operator's licences is the responsibility of the Licensing Committee

#### **DETAILS OF CONSULTATION**

- 11 Lancashire Constabulary

#### **BACKGROUND PAPERS**

- 12 Local Government Association's (LGA) 'Example Taxi and PHV Licensing Criminal Convictions' Policy'. March 2017

#### **FURTHER INFORMATION**

**PLEASE CONTACT:**

**Peter Henderson**

**ALSO:**

**Karen Davies**



## **TAXI LICENSING – POLICY GUIDELINES TO FITNESS AND PROPRIETY INCLUDING CONVICTIONS AND OTHER RELEVANT INFORMATION**

NOTE: In the Council's view this statement and the guidelines that follow are compatible with the rights and freedoms under the European Convention on Human Rights.

**This document aims to provide guidance to any person with an interest in public and private hire licensing. In particular, but not exclusively:**

- Applicants for drivers' Licences
- Existing licensed drivers whose Licences are being reviewed
- Licensing Officers
- Members of the Licensing Committee
- Magistrates hearing appeals against local authority decisions
- Lancashire Constabulary

**Where Officers have delegated powers to grant or refuse Licences, they will utilise these guidelines when making a decision to grant a Licence. In other cases Applications for Licences will be referred to the Licensing Committee.**

**Whilst Officers and the Committee will have regard to the guidelines contained in the policy, each case will be considered on its Individual merits and, where the circumstances demand, the Committee/Officer may depart from the guidelines.**

### **Background**

1. In this Policy the following words have the following meanings:
  - a. "Applicant" means a person applying for a Licence, an existing Licence Holder applying for renewal of a Licence, or an existing Licence Holder whose Licence is subject to a decision by the Council to revoke, suspend or take no further action
  - b. "Application" means an Application for a Licence, an Application for renewal of a Licence, or a decision by the Council to revoke, suspend or take no further action in respect of an existing Licence
  - c. "Conviction" means a conviction, caution or formal warning and endorsable fixed penalty
  - d. "Council" means Burnley Borough Council
  - e. "Driver" means a person applying for a Licence or a Licence Holder

- f. "Individual" includes an existing Licence Holder, an applicant for a new Licence, and an Applicant for the renewal of an existing Licence
  - g. "Issue" includes any complaints made to the Council, Police, Operators or any other agency, breaches of licensing conditions and intelligence received from other agencies (including circumstances which have not resulted in a criminal Conviction or other disposal). E.g. incidents which have resulted in a police investigation where there has been no further action due to the criminal burden of proof will still be considered if the Council is satisfied that the incident occurred based on the balance of probabilities)
  - h. "Licence" means a Licence to drive a hackney carriage or a private hire vehicle.
  - i. "Licence Holder" means the holder of a current valid Licence granted by the Council
2. Where this Policy refers to a period free of Conviction, that period is to be calculated as:

Commencing on the later of:

- a) the date of the Conviction (or where the Conviction is appealed, the date on which the appeal is finally determined);
- b) in the case of a Licence Holder, the date the Conviction was reported to the Council;
- c) in the case of a Licence Holder, the date the Council became aware of the conviction from any other source;
- d) the date any custodial sentence was completed;
- e) the end date of any period of disqualification from driving; or
- f) In the case of a suspension, revocation or refusal to grant or renew a Licence where the decision is appealed, the date on which the appeals process is finally expended.

and ending on the date of determination of the Application.

3. Licences for drivers of hackney carriages or private hire vehicles may only be granted where the Council is satisfied that the Individual is a fit and proper person to hold such a Licence.
4. The document is intended to give guidance on one aspect of whether a person is or is not a fit and proper person namely the situation where a person has previous Convictions and cautions.
5. The Council is concerned to ensure:
- a. That a person is a fit and proper person.
  - b. The public are not exposed to persons with a history of dishonesty, indecency or violence.
  - c. The safeguarding of children and young persons and vulnerable adults.
6. The public are not normally permitted to attend Committee hearings for private hire or hackney carriage drivers Applications however, in determining whether to grant a

Licence the committee or officers will take into account the human rights of the wider public and balance these against the human rights of the Applicant.

7. When submitting an Application, Individuals are required to declare all previous Convictions they may have. Individuals are also required to declare all formal/simple cautions, any matters of restorative justice and all fixed penalties and all endorsable fixed penalties they have received and to provide details of all criminal matters of which they are currently the subject of criminal investigation or prosecution. It is an offence for any person knowingly or recklessly making a false declaration or to omit any material particular in giving information required by the Application for a Licence. Where an Applicant has made a false statement or a false declaration on their Application for the grant or renewal of a Licence, the Licence will normally be refused.
8. The information given will be treated in confidence and will only be taken into account in relation to the relevant Application to assist the Council in determining whether the Applicant is a fit and proper person to hold a Licence for the purposes of sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976, or whether the Council should exercise any of its powers under section 61 of the Act (i.e. suspension, revocation or refusal to renew a Licence).
9. Applicants for a Licence to drive a hackney carriage or private hire vehicle should be aware that the Council is empowered by law to check with the Disclosure Barring Service for the existence and content of any criminal record and other intelligence held in their name. Officers from the licensing section will where appropriate contact other agencies for any other information which they may hold for instance, the Council's Housing Service, Lancashire County Council Children's Services and Lancashire Constabulary. Information received from the Disclosure Barring Service or other agency will be kept in strict confidence while the licensing process takes its course and will be retained no longer than is necessary and in any event will be destroyed in accordance with the requirements of the Data Protection Act 1998 and in accordance with good practice after the Application is determined or any appeal against such determination is decided.
10. The disclosure of a criminal Convictions or other relevant information relating to an Individual's conduct will not necessarily debar an Individual from being granted, retaining or renewing a Licence. It will depend on whether or not the Individual can satisfy the Council that they are a fit and proper person to hold such a Licence.
11. The Council may fail to be satisfied that an Individual is a fit and proper person to hold a Licence for any good reason. If adequate evidence that a person is a fit and proper person is not adduced or if there is good reason to question or doubt the evidence provided, then that could amount to good reason to refuse a Licence.
12. In considering evidence of an Individual's good character and fitness to hold a Licence, where previous Convictions or other information relating to criminal

matters/character is disclosed, the Council will consider the nature of the offence/Issue and penalty. When it was committed/took place, the date of Conviction/Issue and the length of time which has elapsed, the Individuals age when the offence was committed/Issue took place whether or not it is part of a pattern of criminal behaviour, the intent, the harm which was, or could have been caused and any other factors which might be relevant. Where an Individual has been convicted of a criminal offence, the Council cannot review the merits of the conviction [*Nottingham City Council v. Mohammed Farooq (1998)*]

13. The Council has adopted the following guidelines relating to the relevance of Convictions to which it refers in determining Applications for Licences and when considering whether to take any action against an existing Licence Holder, and references to the grant of a licence in these guidelines shall be construed accordingly.
14. The guidelines do not deal with every type of offence, and do not prevent the Council from taking into account offences not specifically addressed in the guidelines, or other conduct, which may be relevant to an Individual. If an Individual has a Conviction for an offence not covered by the guidelines regard will be had to the factors at paragraph 12 when deciding whether any action should be taken.
15. Offences described in the guidelines and similar offences, though differently entitled in any statutory provision, modification or re-enactment, will be taken into account in accordance with the guidelines.
16. The guidelines are not an attempt to define what a “fit and proper person” is.
17. Any Individual who is refused a Licence or has such a Licence suspended or revoked has a right of appeal to the Magistrates’ Court within 21 days of the notice of refusal.

## **GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS AND OTHER INFORMATION**

### **General Policy**

1. Each case will be decided on its own merits.
2. The Council has a duty to ensure so far as possible that drivers are fit and proper persons to hold Licences. One aspect of that is the extent to which previous Convictions, including but not limited to Convictions for offences against children and young persons, dishonesty, sexual offences, traffic offences, violence and drugs indicate that a person is not a fit and proper person, and would not take advantage of passengers or abuse or assault them.
3. The Council has a duty to take into account any complaints made to the Council, Police, licensed Operators or any other agency, breaches of licensing conditions and any intelligence received from other agencies (including circumstances which have not resulted in a criminal Conviction or other disposal, e.g.
  - a) incidents that have resulted in a police investigation where there has been no further action due to the criminal burden of proof will still be considered if the Council is satisfied that the incident occurred based on the balance of probabilities.
  - b) Incidents that have resulted in the suspension or revocation of a licence which has been issued by another Council.
4. Restorative justice and other criminal disposals are increasingly used by the police as a less formal way of dealing with issues and as an alternative to the criminal court system. The Council recognises that restorative justice and other out of court disposals tend to be applied in less serious cases or for first time offenders, nevertheless all such disposals will be taken into account when determining if a person is a fit and proper person.
5. An Individual with a Conviction for a serious offence need not be automatically barred from obtaining a Licence, but would normally be expected to:
  - a. Remain free of Conviction for an appropriate period; and
  - b. Show adequate evidence that he or she is a fit and proper person to hold a Licence (the onus is on the Applicant to produce such evidence). A person with a Conviction for a single serious offence or a number of separate offences is not barred from applying for a private hire or hackney carriage driver Licence, but would normally be expected to remain free from Conviction for an appropriate period (which will depend on the nature of the offence.)
  - c. Simply remaining free of Conviction will not generally be regarded as adequate evidence that a person is a fit and proper person to hold a Licence.
6. Some discretion may be appropriate if the offence is an isolated one with mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate

behaviour, which will be taken into account. (In any case which involves certain specified sexual offences, murder or manslaughter a Licence will normally be refused.)

7. In relation to the period that a driver is expected to remain free of Conviction as detailed in paragraphs A-D and F, if an Applicant has more than 1 Conviction for any of the offences listed, the period free of Conviction will increase by 1 year per additional offence.

8. Where the Licensing Committee convene to consider an Application they may do so by:

a. Hearing with notice – Notice of the time and date when a committee will be convened will be given to the Applicant ahead of the date listed in order to allow the person to seek independent legal advice and to attend and be represented at the hearing. The procedure to be followed will be provided to the Applicant with the notice.

b. Ex-parte hearing – which will take place in accordance with the Ex-parte hearings policy. In exceptional circumstances relevant information will be assessed to balance a person's right to a fair hearing against whether or not it is in the public interest to hold the hearing ex-parte.

9. Where new offences are created or existing offences are consolidated or re-enacted etc. they will be treated in a manner appropriate to their severity whether or not this guidance has been updated to reflect the changes.

10. The following examples afford a general guide on the action, which might be taken where Convictions are disclosed.



## **A. OFFENCE OF DISHONESTY**

Applicants are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare and in other ways.

Passengers may include especially vulnerable people and children.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing, passengers may include especially vulnerable people. In certain situations drivers will know that a property is empty whilst the occupants are away on holiday for a set period of time after taking them to the airport or railway station.

The widespread practice of delivering unaccompanied property is indicative of the trust that businesses put into drivers.

For these reasons a serious view is taken of any Convictions involving dishonesty.

In general, a minimum period of 5 years free of conviction should be required before granting a Licence.

Offences involving dishonesty include (but are not limited to);

- Theft
- Burglary
- Fraud
- Benefit fraud
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception
- Taking a vehicle without consent
- And any similar offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A Licence will not normally be granted if an Applicant has more than one Conviction for a dishonesty offence.

Applicants that are found to have intentionally misled the council, or lied as part of the Application process, will not be issued with a Licence.

## **B. VIOLENCE (OTHER THAN SEXUAL AND INDECENCY OFFENCES)**

Licensed drivers have close, regular contact with the public. A firm line is to be taken with those who have Convictions for offences involving violence. An Application will normally be refused if the Applicant has a Conviction for an offence that involved the loss of life.

Unless there are exceptional circumstances a Licence will not normally be granted where the Applicant has a Conviction for an offence such as:

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Terrorism offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A Licence will not normally be granted where the Applicant has a Conviction for an offence or similar offence(s) which replace the below offences and the Conviction is less than 10 years prior to the date of Application:

- Arson
- Malicious wounding or grievous bodily harm which is racially aggravated
- Actual bodily harm which is racially aggravated
- Grievous bodily harm with intent
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault with racially aggravated
- Violent disorder
- Resisting arrest
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A Licence will not normally be granted where the Applicant has a Conviction for an offence or similar offence(s) which replace the below offences and the Conviction is less than 5 years prior to the date of Application:

- Racially-aggravated criminal damage
- Racially-aggravated offence
- Common assault
- Assault occasioning actual bodily harm
- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction
- Criminal damage

- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A Licence will not normally be granted if an Applicant has more than one Conviction for an offence of a violent nature.

### **C. DRUGS**

An Application from an Individual who has a Conviction related to the supply, intent to supply or production of drugs and the Conviction is less than 10 years prior to the date of Application will generally be refused

An Application from an Individual who has an isolated Conviction for an offence related to the possession of Class A drugs or permitting premises to be used for drug activity within the last 7 years will generally be refused. A Conviction less than 10 years old will be referred to the Committee for determination.

An Application from an Individual who has an isolated Conviction for an offence related to the possession of Class B drugs within the last 5 years will generally be refused. A Conviction less than 7 years old will be referred to the Committee for determination.

An Application from an Individual who has an isolated Conviction for an offence related to the possession of Class C drugs within the last 3 years will generally be refused. A Conviction less than 5 years old will be referred to the Committee for determination. .

An Application will normally be refused where the Individual has more than one Conviction for a drugs related offence

If any Applicant was an addict then they will normally be required to show evidence of 5 years free from drug taking after detoxification treatment as required by the Council.

## **D. SEXUAL AND INDECENCY OFFENCES**

As licensed drivers often carry unaccompanied and vulnerable passengers, the licensing authority will take a strong line in relation to applicants or existing licence holders with convictions for sexual offences. All sexual and indecency offences will be considered as serious. Applicants with Convictions for sexual or indecency offences that involve a third party will normally be refused a Licence. Such offences include (but are not limited to);

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults
- Sexual assault
- Indecent assault
- Exploitation of prostitution
- Trafficking for sexual exploitation
- Possession of indecent photographs, child pornography etc.
- Indecent exposure
- Soliciting (kerb crawling)
- Or any sex or indecency offence that was committed in the course of employment as a taxi or PHV driver

Any Individual currently on the sex offenders' register would not normally be granted a Licence.

### **Intelligence and other information which has not resulted in a criminal conviction**

The Council will sometimes be made aware of other intelligence or low level information about an Individual which has not resulted in the conviction of that person but is relevant in relation to their character. Officers will give appropriate consideration to this information and will seek to consult with other appropriate agencies in order to ensure that they have a comprehensive understanding. Any additional information gathered through this process may then be taken into account.

## E MOTORING CONVICTIONS

### I. Major Traffic Offences

- a. An isolated Conviction, without disqualification, for an offence such as dangerous driving will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of drivers. However, where the Conviction is within 3 years prior to the date of the Application the Application will normally be refused.
- b. Applications where there is more than one Conviction for this type of offence within the last 5 years will normally be refused
- c. A list of offences to which this paragraph applies is attached as **Appendix I**.

### II. Minor Traffic Offences

- a. Isolated Convictions for minor traffic offences should not normally prevent an Application from being granted. However, the number, type and frequency of this type of offence will be taken into account and if there is more than 1 offence of this nature the Applicant will normally be expected to show a period free of Conviction of at least 6 months.
- b. In particular, an Application will normally be refused where the Applicant has 12 or more penalty points on his DVLA Licence (whether or not the Applicant was convicted by a court for the offences for which the points were imposed) or where the Applicant has more than one Conviction for this type of offence within the last 6 months.
- c. A list of offences to which this paragraph applies is attached as **Appendix II**.

### III. Hybrid Traffic Offences

- a. Offences of the type listed in **Appendix III** will be treated as major traffic offences if the court awarded 4 or more penalty points for the offence and as minor traffic offences if the court awarded 3 or less penalty points for the offence.

### IV. Disqualification

#### Major Traffic Offence

An application will generally be refused unless a period of 3 years free from conviction has elapsed from the restoration of the DVLA licence, and 5 years where the disqualification relates to driving whilst unfit through drink or drugs.

#### Minor Traffic Offence

An application will generally be refused unless the individual can show a period free from conviction has elapsed from the restoration of the DVLA licence which is equal to the period of disqualification imposed by the court i.e. 3 month disqualification = 3 month period free from conviction. Where no disqualification has been given the period free from conviction will be determined by reference to the period(s) free from conviction for a minor traffic offence(s).

### **Hybrid Traffic Offence**

An application will generally be refused unless the individual can show a period free from conviction has elapsed from the restoration of the DVLA licence which is twice the period of disqualification imposed by the court. e.g. 3 month disqualification = 6 month period free from conviction. Where no disqualification has been given the period free from conviction will be determined by reference to the period(s) free from conviction for hybrid traffic offence(s).

## **V. Totting Up**

TT99 Totting up – if the total of penalty points reaches 12 or more within 3 years the driver is liable to disqualification by the Court.

### **Totting up With Disqualification**

An application will generally be refused unless the individual can show a period of at least 12 month free from conviction has elapsed from the restoration of the DVLA licence.

Where any of the offences which contribute to a totting up disqualification are a Major Traffic Offence the Council will consider the application under “Disqualification – major traffic offence”

### **Totting up without Disqualification**

In “totting-up” cases where disqualification is considered by the court, even if the court does not disqualify (e.g. because of exceptional circumstances) a driver the Council is likely to refuse driver’s Licence because different criteria apply and an Applicant will normally be expected to show a period of at least 12 months free from Conviction from the date the court made its finding of exceptional circumstances justifying the non-disqualification.

In these circumstances the Council will consider the application as a disqualification for the most serious of the offences contributing to the totting up (e.g. where the offences contributing to the totting up are SP30, SP80 and IN10 the Council would consider IN10 under ‘Disqualification – Major Traffic Offence’).

**F OFFENCES UNDER THE TOWN POLICE CLAUSES ACTS AND  
PART II OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT  
1976**

One of the main purposes of the licensing regime set out in the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 ("the Acts") is to ensure the protection of the public. For this reason a serious view is taken of Convictions for offences under the Acts (including illegally plying for hire) when deciding whether an Applicant is to be treated as a fit and proper person to hold a Licence.

In particular, an Applicant will normally be refused a Licence where (s)he has been Convicted of an offence under the Acts at any time during the 2 years preceding the Application or has more than one Conviction within the last 5 years preceding the date of the Application.

## **G DRUNKENNESS**

### **Not in a motor vehicle**

An isolated Conviction for drunkenness need not debar an Applicant from being granted a Licence. In some cases, a warning may be appropriate. However, more than 1 Conviction in the last 2 years will merit a refusal.

In addition the Applicant will normally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if they were an alcoholic.



## **H SPENT CONVICTIONS**

By virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002 taxi drivers are an exempted occupation for the purposes of the 1974 Act and convictions are therefore never spent.

The Council will only consider spent Convictions if it appears to be relevant for deciding whether the Applicant is a fit and proper person to hold a Licence and that justice cannot be done in the case, except by admitting or requiring evidence relating to that spent Conviction. The council will in its consideration the nature of the offence(s), the history or pattern of offending, the lapse of time and whether all the convictions have previously been considered

**MAJOR TRAFFIC OFFENCES**  
*(Paragraph (E,I) refers)*

AC10	Failing to stop after an accident
AC20	Failing to give particulars or to report an accident within 24 hours
AC30	Undefined accident offences
BA10	Driving while disqualified by order of court
BA30	Attempting to drive while disqualified by order of court
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death by careless driving when unfit through drugs
CD60	Causing death by careless driving with alcohol level above the limit
CD70	Causing death by careless driving then failing to supply a specimen for analysis
CD71	Causing death by careless driving then failing to provide a specimen for analysis
CD90	Causing death by driving; unlicensed, disqualified or uninsured drivers
CU80	Using a mobile phone whilst driving a motor vehicle
DD10	Causing serious injury by dangerous driving
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
DR10	Driving or attempting to drive with alcohol level above limit
DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR31	Driving or attempting to drive when unfit through drugs
DR40	In charge of a vehicle while alcohol level above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive
DR61	Failure to provide a specimen for drug analysis in circumstances other than driving or attempting to drive
DR70	Failing to provide specimen for breath test
DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle when unfit through drugs
IN10	Using a vehicle uninsured against third party risks
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle having failed to notify a disability

- LC50     Driving after a licence has been revoked or refused on medical grounds
- MS50     Motor racing on the highway
- MS60     Offences not covered by other codes
- MS90     Failure to give information as to identity of driver etc.
- UT50     Aggravated taking of a vehicle

*Aiding, abetting, counselling or procuring*

Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)

*Causing or permitting*

Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)

*Inciting*

Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16)

**MINOR TRAFFIC OFFENCES**  
*(Paragraph (E,II) refers)*

MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street Offences
MS40	Driving with uncorrected defective eyesight or refusing to submit to a test
MS70	Driving with uncorrected defective eyesight
MS80	Refusing to submit to an eyesight test
MW10	Contravention of Special Road Regulations (excluding speed limits)
PC10	Undefined contravention of Pedestrian Crossing Regulations
PC20	Contravention of Pedestrian Crossing Regulations with moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with stationary vehicle
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with a "Stop" sign
TS40	Failing to comply with direction of a constable or traffic warden
TS50	Failing to comply with traffic sign (excluding "Stop" sign, traffic lights or double white lines)
TS60	Failing to comply with school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

*Aiding, abetting, counselling or procuring*

Offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)

*Causing or permitting*

Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)

*Inciting*

Offences as coded above, but with 0 changed to 6 (e.g. PC10 becomes PC16)

**HYBRID TRAFFIC OFFENCES**  
*(Paragraph (E,III) refers)*

- CD 10 Driving without due care and attention
- CD20 Driving without reasonable consideration for other road users
- CD30 Driving without due care and attention or without reasonable consideration for other road users
  
- CU10 Using vehicle with defective brakes
- CU20 Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
- CU30 Using a vehicle with defective tyre(s)
- CU40 Using a vehicle with defective steering
- CU50 Causing or likely to cause danger by reason of load or passengers
  
  
- LC20 Driving otherwise than in accordance with a Licence
  
  
- SP10 Exceeding goods vehicle speed limit
- SP20 Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
- SP30 Exceeding statutory speed limit on a public road
- SP40 Exceeding passenger vehicle speed limit
- SP50 Exceeding speed limit on a motorway
- SP60 Undefined speed limit offence

*Aiding, abetting, counselling or procuring*

Offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12)

*Causing or permitting*

Offences as coded above, but with 0 changed to 4 (e.g. CU10 becomes CU14)

*Inciting*

Offences as coded above, but with 0 changed to 6 (e.g. CU10 becomes CU16)

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## **TAXI LICENSING – POLICY GUIDELINES TO FITNESS AND PROPRIETY INCLUDING CONVICTIONS AND OTHER RELEVANT INFORMATION**

NOTE: In the Council's view this statement and the guidelines that follow are compatible with the rights and freedoms under the European Convention on Human Rights.

**This document aims to provide guidance to any person with an interest in public and private hire licensing. In particular, but not exclusively:**

- Applicants for drivers' Licences
- Existing licensed drivers whose Licences are being reviewed
- Licensing Officers
- Members of the Licensing Committee
- Magistrates hearing appeals against local authority decisions
- Lancashire Constabulary

**Where Officers have delegated powers to grant or refuse Licences, they will utilise these guidelines when making a decision to grant a Licence. In other cases Applications for Licences will be referred to the Licensing Committee.**

**Whilst Officers and the Committee will have regard to the guidelines contained in the policy, each case will be considered on its Individual merits and, where the circumstances demand, the Committee/Officer may depart from the guidelines.**

### **Background**

1. In this Policy the following words have the following meanings:
  - a. "Applicant" means a person applying for a Licence, an existing Licence Holder applying for renewal of a Licence, or an existing Licence Holder whose Licence is subject to a decision by the Council to revoke, suspend or take no further action
  - b. "Application" means an Application for a Licence, an Application for renewal of a Licence, or a decision by the Council to revoke, suspend or take no further action in respect of an existing Licence
  - c. "Conviction" means a conviction, caution or formal warning and endorsable fixed penalty
  - d. "Council" means Burnley Borough Council
  - e. "Driver" means a person applying for a Licence or a Licence Holder

- f. "Individual" includes an existing Licence Holder, an applicant for a new Licence, and an Applicant for the renewal of an existing Licence
  - g. "Issue" includes any complaints made to the Council, Police, Operators or any other agency, breaches of licensing conditions and intelligence received from other agencies (including circumstances which have not resulted in a criminal Conviction or other disposal). E.g. incidents which have resulted in a police investigation where there has been no further action due to the criminal burden of proof will still be considered if the Council is satisfied that the incident occurred based on the balance of probabilities)
  - h. "Licence" means a Licence to drive a hackney carriage or a private hire vehicle.
  - i. "Licence Holder" means the holder of a current valid Licence granted by the Council
2. Where this Policy refers to a period free of Conviction, that period is to be calculated as:

Commencing on the later of:

- a) the date of the Conviction;~~(or where the Conviction is appealed, the date on which the appeal is finally determined)~~
- b) in the case of a Licence Holder, the date the Conviction was reported to the Council;
- c) in the case of a Licence Holder, the date the Council became aware of the conviction from any other source;
- d) the date any custodial sentence was completed; ~~or~~ e) the end date of any period of disqualification from driving; or
- ~~e) —~~

and ending on the date of determination of the Application.

- 3. Licences for drivers of hackney carriages or private hire vehicles may only be granted where the Council is satisfied that the Individual is a fit and proper person to hold such a Licence.
- 4. The document is intended to give guidance on one aspect of whether a person is or is not a fit and proper person namely the situation where a person has previous Convictions and cautions.
- 5. The Council is concerned to ensure:
  - a. That a person is a fit and proper person.
  - b. The public are not exposed to persons with a history of dishonesty, indecency or violence.
  - c. The safeguarding of children and young persons and vulnerable adults.
- 6. The public are not normally permitted to attend Committee hearings for private hire or hackney carriage drivers Applications however, in determining whether to grant a Licence the committee or officers will take into account the human rights of the wider public and balance these against the human rights of the Applicant.



7. When submitting an Application, Individuals are required to declare all previous Convictions they may have. Individuals are also required to declare all formal/simple cautions, any matters of restorative justice and all fixed penalties and all endorsable fixed penalties they have received and to provide details of all criminal matters of which they are currently the subject of criminal investigation or prosecution. [It is an offence for any person knowingly or recklessly making a false declaration or to omit any material particular in giving information required by the Application for a Licence. Where an Applicant has made a false statement or a false declaration on their Application for the grant or renewal of a Licence, the Licence will normally be refused.](#)
8. The information given will be treated in confidence and will only be taken into account in relation to the relevant Application to assist the Council in determining whether the Applicant is a fit and proper person to hold a Licence for the purposes of sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976, or whether the Council should exercise any of its powers under section 61 of the Act (i.e. suspension, revocation or refusal to renew a Licence).
9. Applicants for a Licence to drive a hackney carriage or private hire vehicle should be aware that the Council is empowered by law to check with the Disclosure Barring Service for the existence and content of any criminal record and other intelligence held in their name. Officers from the licensing section will where appropriate contact other agencies for any other information which they may hold for instance, the Council's Housing Service, Lancashire County Council Children's Services and Lancashire Constabulary. Information received from the Disclosure Barring Service or other agency will be kept in strict confidence while the licensing process takes its course and will be retained no longer than is necessary and in any event will be destroyed in accordance with the requirements of the Data Protection Act 1998 and in accordance with good practice after the Application is determined or any appeal against such determination is decided.
10. The disclosure of a criminal Convictions or other relevant information relating to an Individual's conduct will not necessarily debar an Individual from being granted, retaining or renewing a Licence. It will depend on whether or not the Individual can satisfy the Council that they are a fit and proper person to hold such a Licence.
11. The Council may fail to be satisfied that an Individual is a fit and proper person to hold a Licence for any good reason. If adequate evidence that a person is a fit and proper person is not adduced or if there is good reason to question or doubt the evidence provided, then that could amount to good reason to refuse a Licence.
12. In considering evidence of an Individual's good character and fitness to hold a Licence, where previous Convictions or other information relating to criminal matters/character is disclosed, the Council will consider the nature of the offence/issue and penalty. When it was committed/took place, the date of

Conviction/Issue and the length of time which has elapsed, the Individuals age when the offence was committed/Issue took place whether or not it is part of a pattern of criminal behaviour, the intent, the harm which was, or could have been caused and any other factors which might be relevant. Where an Individual has been convicted of a criminal offence, the Council cannot review the merits of the conviction [*Nottingham City Council v. Mohammed Farooq (1998)*]

13. The Council has adopted the following guidelines relating to the relevance of Convictions to which it refers in determining Applications for Licences and when considering whether to take any action against an existing Licence Holder. and references to the grant of a licence in these guidelines shall be construed accordingly.
14. The guidelines do not deal with every type of offence, and do not prevent the Council from taking into account offences not specifically addressed in the guidelines, or other conduct, which may be relevant to an Individual. If an Individual has a Conviction for an offence not covered by the guidelines regard will be had to the factors at paragraph 12 when deciding whether any action should be taken.
15. Offences described in the guidelines and similar offences, though differently entitled in any statutory provision, modification or re-enactment, will be taken into account in accordance with the guidelines.
16. The guidelines are not an attempt to define what ~~is a "fit and proper person"~~ a "fit and proper person" is.
17. Any Individual who is refused a Licence or has such a Licence suspended or revoked has a right of appeal to the Magistrates' Court within 21 days of the notice of refusal.

## **GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS AND OTHER INFORMATION**

### **General Policy**

1. Each case will be decided on its own merits.
2. The Council has a duty to ensure so far as possible that drivers are fit and proper persons to hold Licences. One aspect of that is the extent to which previous Convictions, including but not limited to Convictions for offences against children and young persons, dishonesty, sexual offences, traffic offences, violence and drugs indicate that a person is not a fit and proper person, and would not take advantage of passengers or abuse or assault them.
3. The Council has a duty to take into account any complaints made to the Council, Police, licensed Operators or any other agency, breaches of licensing conditions and any intelligence received from other agencies (including circumstances which have not resulted in a criminal Conviction or other disposal, [e.g.g.](#)
  - a) incidents that have resulted in a police investigation where there has been no further action due to the criminal burden of proof will still be considered if the Council is satisfied that the incident occurred based on the balance of probabilities.
  - b) Incidents that have resulted in the suspension or revocation of a licence which has been issued by another Council.
4. Restorative justice and other criminal disposals are increasingly used by the police as a less formal way of dealing with issues and as an alternative to the criminal court system. The Council recognises that restorative justice and other out of court disposals tend to be applied in less serious cases or for first time offenders, nevertheless all such disposals will be taken into account when determining if a person is a fit and proper person.
5. An Individual with a Conviction for a serious offence need not be automatically barred from obtaining a Licence, but would normally be expected to:
  - a. Remain free of Conviction for an appropriate period; and
  - b. Show adequate evidence that he or she is a fit and proper person to hold a Licence (the onus is on the Applicant to produce such evidence). A person with a Conviction for a single serious offence or a number of separate offences is not barred from applying for a private hire or hackney carriage driver Licence, but would normally be expected to remain free from Conviction for an appropriate period (which will depend on the nature of the offence.)
  - c. Simply remaining free of Conviction will not generally be regarded as adequate evidence that a person is a fit and proper person to hold a Licence.
6. Some discretion may be appropriate if the offence is an isolated one with mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate

behaviour, which will be taken into account. (In any case which involves certain specified sexual offences, murder or manslaughter a Licence will normally be refused.)

7. In relation to the period that a driver is expected to remain free of Conviction as detailed in paragraphs A-D and F, if an Applicant has more than 1 Conviction for any of the offences listed, the period free of Conviction will increase by 1 year per additional offence.

8. Where the Licensing Committee convene to consider an Application they may do so by:

a. Hearing with notice – Notice of the time and date when a committee will be convened will be given to the Applicant ahead of the date listed in order to allow the person to seek independent legal advice and to attend and be represented at the hearing. The procedure to be followed will be provided to the Applicant with the notice.

b. Ex-parte hearing – which will take place in accordance with the Ex-parte hearings policy. In exceptional circumstances relevant information will be assessed to balance a person's right to a fair hearing against whether or not it is in the public interest to hold the hearing ex-parte.

9. Where new offences are created or existing offences are consolidated or re-enacted etc. they will be treated in a manner appropriate to their severity whether or not this guidance has been updated to reflect the changes.

10. The following examples afford a general guide on the action, which might be taken where Convictions are disclosed.

## A. OFFENCE OF DISHONESTY

Applicants are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare and in other ways.

Passengers may include especially vulnerable people and children.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing, passengers may include especially vulnerable people. In certain situations drivers will know that a property is empty whilst the occupants are away on holiday for a set period of time after taking them to the airport or railway station.

The widespread practice of delivering unaccompanied property is indicative of the trust that businesses put into drivers.

For these reasons a serious view is taken of any Convictions involving dishonesty.

~~In particular, an Application will normally be refused where the Individual has a Conviction for an offence or similar offences or offences which replace the offences below and the Conviction is less than 3 years prior to the date of Application~~

- ~~i. Theft~~
- ~~ii. Burglary~~
- ~~iii. Fraud~~
- ~~iv. Benefit fraud (including offences under ss.111A and 112 of the Social Security Administration Act 1992)~~
- ~~v. Handling or receiving stolen goods~~
- ~~vi. Forgery (e.g. producing false insurance policy)~~
- ~~vii. Conspiracy to defraud~~
- ~~viii. Obtaining money or property by deception~~
- ~~ix. Other deception~~

~~In general an Applicant with Convictions for dishonesty which are between 3 and 5 years old will normally be referred to Committee.~~

~~In general, a minimum period of 5 years free of conviction should be required before granting a Licence.~~

Offences involving dishonesty include (but are not limited to):

- Theft
- Burglary
- Fraud
- Benefit fraud
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception
- Taking a vehicle without consent

- And any similar offences
- Or any similar offences (including attempted or conspiracy to commit)offences which replace the above

A Licence will not normally be granted if an Applicant has more than one conviction for a dishonesty offence.

Applicants that are found to have intentionally misled the council, or lied as part of the application process, will not be granted a licence.

## **B. VIOLENCE (OTHER THAN SEXUAL AND INDECENCY OFFENCES)**

Licensed drivers have close, regular contact with the public. A firm line is to be taken with those who have Convictions for offences involving violence. An Application will normally be refused if the Applicant has a Conviction for an offence that involved the loss of life.

Unless there are exceptional circumstances a Licence will not normally be granted where the Applicant has a Conviction for an offence such as:

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Terrorism offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A Licence will not normally be granted where the Applicant has a Conviction for an offence of similar offence(s) which replace the below offences and the Conviction is less than 10 years prior to the date of Application:

- Arson
- Malicious wounding or grievous bodily harm which is racially aggravated
- Actual bodily harm which is racially aggravated
- Grievous bodily harm with intent
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault with racially aggravated
- Violent disorder
- Resisting arrest
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A Licence will not normally be granted where the Applicant has a Conviction for an offence or similar offence(s) which replace the below offences and the Conviction is less than 5 years prior to the date of Application:

- Racially-aggravated criminal damage
- Racially-aggravated offence
- Common assault
- Assault occasioning actual bodily harm
- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction
- Criminal damage

- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A Licence will not normally be granted if an Applicant has more than one Conviction for an offence of a violent nature.

~~Members of the public and in particular, the elderly, infirm and children or vulnerable adults entrust their personal safety to private hire and hackney carriage drivers whenever they take a journey.~~

~~Passengers often travel alone and are vulnerable to physical attack etc.~~

~~Users of private hire and hackney carriage vehicles have a right to expect that drivers are not Individuals with a predisposition towards or a propensity for violent behaviour at any level.~~

### **Offences against Children (under 14 years) and Young Persons (aged 14 to 17 years)**

~~Applicants are often entrusted with the care of children and young persons.~~

~~It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons.~~

~~The Council seeks to minimise risks associated with children and young persons and for that reason a more serious view will be taken where offences of violence involve children or young persons.~~

~~Where the commission of an offence involves loss of life a Licence will normally be refused.~~

~~A Conviction less than 5 years old will generally be refused. In other cases where the Conviction is less than 10 years prior to the date of the Application will be referred to the Committee for determination.~~

### **Offences against Other Persons**

~~Applicants maintain close contact with the public, where the commission of an offence involved loss of life a Licence will normally be refused.~~

~~A Conviction less than 3 years old will generally be refused. In other cases where the Conviction is less than 10 years prior to the date of the Application will be referred to the Committee for determination.~~

~~In particular:~~

~~i. An Application will normally be refused where the Individual has a Conviction for an offence or similar offence(s), or similar offence(s) which replace the below offences:~~

- ~~Murder~~
- ~~Manslaughter~~
- ~~Manslaughter or culpable homicide while driving~~
- ~~Terrorism Offences~~



ii. An Application will also normally be refused where the Individual has a Conviction for an offence or similar offence(s) or similar offence(s) which replace the below offences and the Conviction is less than 10 years prior to the date of Application:

- ~~Arson~~
- ~~Racially aggravated malicious wounding or grievous bodily harm (s.20 Offences Against the Person Act 1861 & s.29(1)(a) Crime and Disorder Act 1998)~~
- ~~Actual bodily harm (s.47 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(b) Crime and Disorder Act 1998)~~
- ~~Grievous bodily harm with intent (s.18 Offences Against the Person Act)~~
- ~~Grievous bodily harm (s.20 Offences Against the Person Act)~~
- ~~Robbery~~
- ~~Possession of firearm~~
- ~~Riot~~
- ~~Assault Police~~
- ~~Common assault with racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)~~
- ~~Violent disorder~~
- ~~Resisting arrest~~

iii. An Application will also normally be refused where the Individual has a Conviction for an offence or similar offence(s) or similar offence(s) which replace the below offences and the Conviction is less than 5 years prior to the date of Application:

- ~~Racially aggravated criminal damage (s.30 Crime and Disorder Act 1998)~~
- ~~Racially aggravated s.4 Public Order Act 1986 offence (fear of provocation of violence) (s.31(1)(a) Crime and Disorder Act 1998)~~
- ~~Racially aggravated s.4A Public Order Act 1986 offence (intentional harassment, alarm or distress (s.31(1)(b) Crime and Disorder Act 1998)~~
- ~~Racially aggravated s.2 Protection from Harassment Act 1997 offence (harassment) (s.32(1)(a) Crime and Disorder Act 1998)~~
- ~~Racially aggravated s.4 Protection from Harassment Act 1997 offence (putting people in fear of violence) (s.32(1)(b) Crime and Disorder Act 1998)~~
- ~~Racially aggravated s.5 Public Order Act 1986 offence (harassment, alarm or distress) (s.31(1)(c) Crime and Disorder Act 1998)~~
- ~~Blackmail~~
- ~~Common assault~~
- ~~Assault occasioning actual bodily harm (s.47 Offences Against the Person Act)~~

- ~~Affray~~
- ~~S5 Public Order Act 1986 offence (harassment, alarm or distress)~~
- ~~S.4 Public Order Act 1986 offence (fear of provocation of violence)~~
- ~~S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)~~
- ~~Harassment/Breach of restraining order – Protection from Harassment Act 1997~~
- ~~Obstruction~~
- ~~Possession of offensive weapon~~
- ~~Criminal damage~~

## C. DRUGS

An Application from an Individual who has a Conviction related to the supply, intent to supply or production of drugs and the Conviction is less than 10 years prior to the date of Application will generally be refused

An Application from an Individual who has an isolated Conviction for an offence related to the possession of Class A drugs or permitting premises to be used for drug activity within the last 7 years will generally be refused. A Conviction less than 10 years old will be referred to the Committee for determination.

An Application from an Individual who has an isolated Conviction for an offence related to the possession of Class B drugs within the last 5 years will generally be refused. A Conviction less than 7 years old will be referred to the Committee for determination.

An Application from an Individual who has an isolated Conviction for an offence related to the possession of Class C drugs within the last 3 years will generally be refused. A Conviction less than 5 years old will be referred to the Committee for determination. .

An Application will normally be refused where the Individual has more than one Conviction for ~~offences related to the possession of drugs and the most recent Conviction is less than 7 years prior to the date of the Application.~~ a drugs related offence

If any Applicant was an addict then they will normally be required to show evidence of 5 years free from drug taking after detoxification treatment as required by the Council.

## D. SEXUAL AND INDECENCY OFFENCES

As Licensed drivers often carry unaccompanied and vulnerable passengers, the licensing authority will take a strong line in relation to Applicants with convictions for sexual offences. All sexual and indecency offences will be considered as serious. Applicants with Convictions for sexual or indecency offences that involve a third party will normally be refused a Licence. Such offences include (but are not limited to):

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults
- Sexual assault
- Indecent assault
- Exploitation of prostitution
- Trafficking for sexual exploitation
- Possession of indecent photographs, child pornography etc.
- Indecent exposure
- Soliciting (kerb crawling)
- Or any sex or indecency offence that was committed in the course of employment as a taxi or PHV driver

Any Individual currently on the sex offenders' register would not normally be granted a Licence.

### **~~Offences against Children (under 14 years) and Young Persons (aged 14 to 17 years)~~**

~~Applicants are often entrusted with the care of children and young persons. It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons.~~

~~Where the commission of a sexual offence involves a child or young person an Application for a Licence will normally to be refused.~~

### **Intelligence and other information which has not resulted in a criminal conviction**

The Council will sometimes be made aware of other intelligence or low level information about an Individual which has not resulted in the conviction of that person but is relevant in relation to their character. Officers will give appropriate consideration to this information and will seek to consult with other appropriate agencies in order to ensure that they have a comprehensive understanding. Any additional information gathered through this process may then be taken into account.

### **~~Offences against persons other than children / young persons~~**

~~Applicants often carry unaccompanied passengers. Individuals with a Conviction for rape, indecent assault, or other similar offences or similar offences under the Sexual Offences Act 2003, will normally be refused a Licence.~~

~~Applicants on the sex offenders register will normally be refused. Individuals with a Conviction less than 5 years old relating to sexual offences such as soliciting, importuning,~~

~~indecent exposure or other similar offences under the Sexual Offences Act 2003, will normally be refused.~~

~~Where the Conviction is between 5 and 10 old it will be referred to Committee. After 5 years, consideration will be given to the circumstances of the offence and any evidence demonstrating that the person is now a fit and proper person to hold a Licence. Amongst circumstances, which the Council may wish to consider, are circumstances, which if they occurred at the time of the consideration of the Application would not be a criminal offence.~~

## E MOTORING CONVICTIONS

### I. Major Traffic Offences

- a. An isolated Conviction, without disqualification, for an offence such as dangerous driving will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of drivers. However, where the Conviction is within 3 years prior to the date of the Application the Application will normally be refused.
- b. Applications where there is more than one Conviction for this type of offence within the last 5 years will normally be refused
- c. A list of offences to which this paragraph applies is attached as **Appendix I**.

### II. Minor Traffic Offences

- a. Isolated Convictions for minor traffic offences should not normally prevent an Application from being granted. However, the number, type and frequency of this type of offence will be taken into account and if there is more than 1 offence of this nature the Applicant will normally be expected to show a period free of Conviction of at least 6 months.
- b. In particular, an Application will normally be refused where the Applicant has 12 or more penalty points on his DVLA Licence (whether or not the Applicant was convicted by a court for the offences for which the points were imposed) or where the Applicant has more than one Conviction for this type of offence within the last 6 months.
- c. A list of offences to which this paragraph applies is attached as **Appendix II**.

### III. Hybrid Traffic Offences

- a. Offences of the type listed in **Appendix III** will be treated as major traffic offences if the court awarded 4 or more penalty points for the offence and as minor traffic offences if the court awarded 3 or less penalty points for the offence.

### IV. Disqualification

#### **Major Traffic Offence**

An application will generally be refused unless a period of 3 years free from conviction has elapsed from the restoration of the DVLA licence, and 5 years where the disqualification relates to driving whilst unfit through drink or drugs.

#### **Minor Traffic Offence**

An application will generally be refused unless the individual can show a period free from conviction has elapsed from the restoration of the DVLA licence which is equal to the period of disqualification imposed by the court i.e. 3 month disqualification = 3 month period free from conviction. Where no disqualification has been given the period free from conviction will be determined by reference to the period(s) free from conviction for a minor traffic offence(s).

### **Hybrid Traffic Offence**

An application will generally be refused unless the individual can show a period free from conviction has elapsed from the restoration of the DVLA licence which is twice the period of disqualification imposed by the court. e.g 3 month disqualification = 6 month period free from conviction. Where no disqualification has been given the period free from conviction will be determined by reference to the period(s) free from conviction for hybrid traffic offence(s).

## **V. Totting Up**

TT99 Totting up – if the total of penalty points reaches 12 or more within 3 years the driver is liable to disqualification by the Court.

### **Totting up With Disqualification**

An application will generally be refused unless the individual can show a period of at least 12 month free from conviction has elapsed from the restoration of the DVLA licence.

Where any of the offences which contribute to a totting up disqualification are a Major Traffic Offence the Council will consider the application under “Disqualification – major traffic offence”

### **Totting up without Disqualification**

In “totting-up” cases where disqualification is considered by the court, even if the court does not disqualify (e.g. because of exceptional circumstances) a driver the Council is likely to refuse driver’s Licence because different criteria apply and an Applicant will normally be expected to show a period of at least 12 months free from Conviction from the date the court made its finding of exceptional circumstances justifying the non-disqualification.

In these circumstances the Council will consider the application as a disqualification for the most serious of the offences contributing to the totting up (e.g. where the offences contributing to the totting up are SP30, SP80 and IN10 the Council would consider IN10 under ‘Disqualification – Major Traffic Offence’).

**F OFFENCES UNDER THE TOWN POLICE CLAUSES ACTS AND  
PART II OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT  
1976**

One of the main purposes of the licensing regime set out in the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 ("the Acts") is to ensure the protection of the public. For this reason a serious view is taken of Convictions for offences under the Acts (including illegally plying for hire) when deciding whether an Applicant is to be treated as a fit and proper person to hold a Licence.

In particular, an Applicant will normally be refused a Licence where (s)he has been Convicted of an offence under the Acts at any time during the 2 years preceding the Application or has more than one Conviction within the last 5 years preceding the date of the Application.



## **G DRUNKENNESS**

### **Not in a motor vehicle**

An isolated Conviction for drunkenness need not debar an Applicant from being granted a Licence. In some cases, a warning may be appropriate. However, more than 1 Conviction in the last 2 years will merit a refusal.

In addition the Applicant will normally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if they were an alcoholic.

## **H SPENT CONVICTIONS**

By virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002 taxi drivers are an exempted occupation for the purposes of the 1974 Act and convictions are therefore never spent.

The Council will only consider spent Convictions if it appears to be relevant for deciding whether the Applicant is a fit and proper person to hold a Licence and that justice cannot be done in the case, except by admitting or requiring evidence relating to that spent Conviction. The council will in its consideration the nature of the offence(s), the history or pattern of offending, the lapse of time and whether all the convictions have previously been considered

**MAJOR TRAFFIC OFFENCES**  
*(Paragraph (E,I) refers)*

AC10	Failing to stop after an accident
AC20	Failing to give particulars or to report an accident within 24 hours
AC30	Undefined accident offences
BA10	Driving while disqualified by order of court
BA30	Attempting to drive while disqualified by order of court
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death by careless driving when unfit through drugs
CD60	Causing death by careless driving with alcohol level above the limit
CD70	Causing death by careless driving then failing to supply a specimen for analysis
CD71	Causing death by careless driving then failing to provide a specimen for analysis
CD90	Causing death by driving; unlicensed, disqualified or uninsured drivers
<a href="#">CU80</a>	<a href="#">Using a mobile phone whilst driving a motor vehicle</a>
DD10	Causing serious injury by dangerous driving
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
DR10	Driving or attempting to drive with alcohol level above limit
DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR31	Driving or attempting to drive when unfit through drugs
DR40	In charge of a vehicle while alcohol level above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive
DR61	Failure to provide a specimen for drug analysis in circumstances other than driving or attempting to drive
DR70	Failing to provide specimen for breath test
DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle when unfit through drugs
IN10	Using a vehicle uninsured against third party risks
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle having failed to notify a disability

- LC50     Driving after a licence has been revoked or refused on medical grounds
  
- MS50     Motor racing on the highway
- MS60     Offences not covered by other codes
- MS90     Failure to give information as to identity of driver etc.
  
- UT50     Aggravated taking of a vehicle

*Aiding, abetting, counselling or procuring*

Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)

*Causing or permitting*

Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)

*Inciting*

Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16)

**MINOR TRAFFIC OFFENCES**  
*(Paragraph (E,II) refers)*

MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street Offences
MS40	Driving with uncorrected defective eyesight or refusing to submit to a test
MS70	Driving with uncorrected defective eyesight
MS80	Refusing to submit to an eyesight test
MW10	Contravention of Special Road Regulations (excluding speed limits)
PC10	Undefined contravention of Pedestrian Crossing Regulations
PC20	Contravention of Pedestrian Crossing Regulations with moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with stationary vehicle
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with a "Stop" sign
TS40	Failing to comply with direction of a constable or traffic warden
TS50	Failing to comply with traffic sign (excluding "Stop" sign, traffic lights or double white lines)
TS60	Failing to comply with school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

*Aiding, abetting, counselling or procuring*

Offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)

*Causing or permitting*

Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)

*Inciting*

Offences as coded above, but with 0 changed to 6 (e.g. PC10 becomes PC16)

**HYBRID TRAFFIC OFFENCES**  
*(Paragraph (E,III) refers)*

CD 10	Driving without due care and attention
CD20	Driving without reasonable consideration for other road users
CD30	Driving without due care and attention or without reasonable consideration for other road users
CU10	Using vehicle with defective brakes
CU20	Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
CU30	Using a vehicle with defective tyre(s)
CU40	Using a vehicle with defective steering
CU50	Causing or likely to cause danger by reason of load or passengers
CU80	<del>Using a mobile phone whilst driving a motor vehicle</del>
LC20	Driving otherwise than in accordance with a Licence
SP10	Exceeding goods vehicle speed limit
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30	Exceeding statutory speed limit on a public road
SP40	Exceeding passenger vehicle speed limit
SP50	Exceeding speed limit on a motorway
SP60	Undefined speed limit offence

*Aiding, abetting, counselling or procuring*

Offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12)

*Causing or permitting*

Offences as coded above, but with 0 changed to 4 (e.g. CU10 becomes CU14)

*Inciting*

Offences as coded above, but with 0 changed to 6 (e.g. CU10 becomes CU16)

## Appointment to Licensing Sub Committees

### REPORT TO LICENSING COMMITTEE



<b>DATE</b>	15/06/2017
<b>PORTFOLIO</b>	Housing and Environment
<b>REPORT AUTHOR</b>	Imelda Grady
<b>TEL NO</b>	477258
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#### PURPOSE

1. To obtain approval of the Licensing Committee for sub delegation of functions to a Licensing Act 2003 Sub Committee and to Taxi Licensing Sub Committees and for the appointment of Licensing Committee members to these sub committees.

#### RECOMMENDATION

2. (1) That a Licensing Act 2003 Sub Committee be established for the sub delegation of functions under the Licensing Act 2003 for a final hearing procedure.
- (2) That two Taxi Licensing Sub Committees be established for sub delegation of functions vested in the Licensing Committee relating to taxi licensing functions as set out in Part 3 of the Council's Constitution
- (3) That members be appointed to the sub committees on a rotational basis subject to their availability.

#### REASONS FOR RECOMMENDATION

3. For the efficient and effective discharge of the Council's Licensing Authority functions.

#### SUMMARY OF KEY POINTS

4. The Licensing and Gambling Acts do not require these sub committees to be politically balanced but it is the Council's current practise to apply the political balance calculation to all statutory and non-statutory groups wherever possible. Other forms of licensing are subject to the political balance rules. Seats on all sub committees will be allocated on a rotational basis between members subject to their availability.

#### **Licensing Act 2003 Sub Committee**

5. Section 10 of the Licensing Act 2003 allows for the powers vested in the Council to be discharged by sub committees of the Licensing Committee and the Council has previously passed a resolution to enable this function to be discharged in this way.
6. In 2008 two Licensing Act 2003 Sub Committees were established each comprising three members plus one substitute member and alternating between daytime and evening meetings. Since 2008 there has been a decline in the number of hearings required under this Act and in 2016 only one hearing was held. Due to the decline in the workload of this

committee only one sub-committee needs to be established and because the hearings under this Act can lengthy and require attendance by the applicants legal representative(s) it is proposed that the committee meets during office hours..

### **Taxi Licensing Sub Committees**

7. In 2014 Council allowed for the provisions with respect to taxis as set out in Part 3 of the Constitution and vested in the Licensing Committee, to be delegated to a Sub Committee comprising 7 members. Two 7 members sub committees were formed, one to meet during the daytime and one to meet in the evenings.
8. During 2016/17 it has been found that daytime meetings (usually at 10 a.m.) are the most convenient for officers. Also an increasing number of meetings are held to determine applications for renewal of private hire vehicle licences where the vehicles have exceed the upper age limit of 8 years as defined in the Council's vehicle age limit policy. This requires Committee members to inspect the vehicles and this is best done during daylight hours.
9. Taxi licensing hearings can be lengthy, often going beyond 2 hours and in the evening this requires the town hall to remain open beyond 8 pm. Evening meetings also incur time off in lieu for officers and this can have a significant impact on office cover during the working day especially where departments face reduced staffing levels.
10. However holding only daytime meetings results in a greater workload for some members whilst others i.e. those that can only attend evening meetings do not gain the experience of sitting on hearings.
11. To try and balance this out and after consultation with the Head of Governance Law Property and Regulation and the Chair of the Licensing Committee, it is proposed that evening meetings continue but on a reduced basis of 1:3 and that they start at 5.30 pm. Where there are vehicle licence renewal applications these would continue to be held during the day.

### **FINANCIAL IMPLICATIONS AND BUDGET PROVISION**

12. None arising from this report

### **POLICY IMPLICATIONS**

13. None

### **DETAILS OF CONSULTATION**

14. Internal

### **BACKGROUND PAPERS**

15. None

### **FURTHER INFORMATION**

**PLEASE CONTACT:**

**ALSO:**